



DEPARTMENT OF HUMAN RESOURCES
EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

STATE OF MARYLAND

HARRY HUGHES
Governor

KALMAN R. HETTLEMAN
Secretary

383-5032

- DECISION -

BOARD OF APPEALS

JOHN J. KENT
Chairman

HENRY G. SPECTOR
HAZEL A. WARNICK
Associate Members

DECISION NO.: 1115-BH-81

DATE: Dec. 7, 1981

CLAIMANT: Klara Berkovich

APPEAL NO.: 19393

S. S. NO.:

EMPLOYER:

L. O NO.: 45

APPELLANT: CLAIMANT

ISSUE: Whether the Claimant established a valid benefit year within the meaning of Section 20(q) of the Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

January 6, 1982

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Klara Berkovich - Claimant
Ilya Elashvili - Interpreter

EMPLOYMENT SECURITY ADMINISTRATION
Mr. John Zell - Legal Counsel

EVIDENCE CONSIDERED

The Board of Appeals has considered all of the evidence presented, including the testimony offered at the hearings. The Board has also considered all of the documentary evidence introduced into this case, as well as Employment Security Administration's documents in the appeal file.

FINDINGS OF FACT

The Claimant filed a claim for benefits with the Employment Security Administration on July 2, 1981.

When the Claimant arrived in the office, she was told by the person taking her claim that she could choose between establishing a benefit year that day (effective June 28, 1981) or establishing a benefit year in the next week (establishing a benefit year effective July 5, 1981). It was explained to the Claimant that, because of the recent legislative increase in the maximum weekly benefit amount, she could possibly be entitled to a higher benefit if she waited until the next week and filed a claim effective July 5, 1981.

The Claimant, knowing that her decision would make her benefit year effective June 28, 1981 and that a possibly lower weekly benefit amount would result, chose to file a claim that day. The Claimant considered the possible benefit of a higher claim amount for a claim filed the next week, but she considered that the benefit to be gained might be offset by the benefit she would have of being able to file the claim one week earlier.

The Claimant understood the difference between the two possible benefit years as the difference between \$120.00 and \$140.00. In reality, the Claimant's benefit amount for her claim effective June 28, 1981 was \$62.00. The record does not disclose what her benefit amount would be for a year with that first claim effective July 5, 1981.

The Claimant received her first check in the amount of \$62.00. She assumed that the amount of \$62.00 was due to her claim only being effective for a partial week on the week beginning June 28, 1981. The Claimant later received her monetary determination showing her weekly benefit amount as \$62.00. When she received her second check in the amount of \$62.00, she visited the local office and attempted to have her benefit year changed to the week beginning July 5, 1981. The Claimant made this visit on approximately July 21, 1981, after having received two checks in the amount of \$62.00.

CONCLUSIONS OF LAW

Under Section 3(b)2 of the Maryland Unemployment Insurance Law, the schedule of benefits which is in effect on the first day of an individual's benefit year shall be the schedule of benefits which shall apply to that individual throughout his benefit year. The term "benefit year" is defined in Section 20(q) of the Law as the one-year period beginning with the first day of the first week with respect to which the individual first filed a claim for benefits.

Applying the law to this case, it is clear that the Claimant's benefit year effective June 28, 1981, and the resulting weekly benefit amount of \$62.00, is fixed for the duration of her benefit year.

Although English is not the Claimant's native language, the Claimant had an interpreter when she filed her claims, and the Board is convinced that the Claimant understood the claims process to the extent described in the Findings of Fact.

The Claimant deliberately chose the benefit year beginning on June 28, 1981. She had been specifically warned that it was possible that her benefit amount would be higher, had she waited until the next week to file her claim. The Board concludes that the mere fact that the exact calculations of her possible benefit years were not provided to the Claimant prior to her decision is not a significant factor. What is significant is that the Claimant was given a choice of benefit years, did understand that choosing one benefit year may result in a lower benefit amount than choosing another benefit year, and deliberately chose a certain benefit year because of the advantage that choice gave her with respect to filing an immediate claim on the day she was in the Local Office.

The remaining legal question is whether the Claimant had the right to withdraw her claim on July 21, 1981 and establish a new claim. The Board concludes, however, that even if there does exist some latitude in the law for the withdrawing of a claim, this is not a case in which such a doctrine would be applied. The Claimant received two checks for the amount which she earned calculated according to the benefit year she chose. She waited approximately nineteen days before attempting to withdraw her claim. At some point, the Agency has the right and the obligation to consider a claim as finally filed and to apply the law as it relates to that filed claim. There is no question in this case but that that point had passed by July 21, 1981. Therefore, the question of whether or not a claimant can withdraw a claim need not be decided in this case.

DECISION

The effective date of the Claimant's benefit year is and will remain to be June 28, 1981. The Claimant's benefit amount shall continue to be calculated on the base year established by the effective date of that claim.

The decision of the Appeals Referee is affirmed.

Thomas W. Keech
Chairman

Harold A. Warwick
Associate Member

K:W
ZVS
(Curbeam)

DATE OF HEARING: November 24, 1981.

COPIES MAILED TO:

CLAIMANT

Mr. John Zell - Legal Counsel

UNEMPLOYMENT INSURANCE - PIMLICO



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 Associate Members

SEVERN E. LANIER
 Appeals Counsel

GARY SMITH
 Chief Hearings Officer

- DECISION -

CLAIMANT: Klara Berkovich
 DATE: 8/27/81
 APPEAL NO.: 19393
 S.S.NO.:
 EMPLOYER:
 L.O.NO.: 45
 APPELLANT: Claimant
 ISSUE: Whether the claimant established a valid benefit year within the meaning of Section 20(q) of the Law.

NOTICE OF RIGHT TO PETITION FOR REVIEW

ANY INTERESTED PARTY TO THIS DECISION MAY REQUEST A REVIEW AND SUCH PETITION FOR REVIEW MAY BE FILED IN ANY EMPLOYMENT SECURITY OFFICE, OR WITH THE APPEALS DIVISION, ROOM 515, 1100 NORTH EUTAW STREET, BALTIMORE, MARYLAND 21201, EITHER IN PERSON OR BY MAIL.

THE PERIOD FOR FILING A PETITION FOR REVIEW EXPIRES AT MIDNIGHT ON Sept. 14, 1981

- APPEARANCES -

FOR THE CLAIMANT:

FOR THE EMPLOYER:

Claimant-Present
 Alya Elashadili - Friend & Interpreter

FINDINGS OF FACT

The claimant filed a claim for Unemployment Insurance Benefits effective June 28, 1981. She has a weekly benefit amount of \$62. The claimant actually filed her claim on July 2, 1981 and, in so doing, established a benefit year of June 28, 1981. The claimant later wanted to change her benefit year from an effective date of June 28, 1981 until July 5, 1981. She thought by establishing a benefit year beginning July 5, 1981 rather than June 28, 1981 she was still entitled to a greater weekly benefit amount. The claimant's request for a change in her effective date of her benefit year was denied by the local office.

She complained that it was not explained to her about the pay base period when she filed her claim on July 2, 1981. She further complained that how the base period was determined or the effect it had on the monetary determination had not been explained to her. She contended that had these matters been explained to her, she would not have filed her claim so as to have established a benefit year effective June 28, 1981. She would have waited to the next week to file and establish a benefit year July 5, 1981 instead.

COMMENTS

Article 95A, Section 20(q) defines . "Benefit Year" with respect to any individual, means a one year period beginning with the first day of the first week with respect to which the individual first filed the claim for benefits in accordance with this article, and thereafter the one year period beginning with the first day of the first week with respect to which the individual next files a claim for benefits after the determination of his last preceding benefit year if at the time of filing the claim the individual has been paid wages for insured work required under this article.

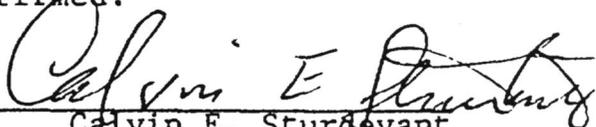
Section 07.04.02.03.C(1) of the Code of Maryland Regulations, Department of Human Resources, Employment Security Administration, Unemployment Insurance, provides the benefit year for any individual, shall begin with the Sunday of the first week for which the individual files a valid claim for benefits. This benefit year shall continue for one full year.

When the claimant filed her claim for Unemployment Insurance Benefits on July 2 1981, she established a benefit year beginning June 28, '1981. Therefore, the Claims Examiner's determination that the claimant established a valid benefit year within the meaning of Section 20(q) of the Maryland Unemployment Insurance Law will be affirmed.

DECISION

The claimant established a valid benefit year within the meaning of Section 20(q) of the Maryland Unemployment Insurance Law.

The Claims Examiner's determination **is affirmed.**


 Calvin E. Sturdevant
 Appeals Referee

Date of Hearing: 8/19/81

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(8848-A) - Curbeam

Copies mailed to:

Claimant
 Unemployment Insurance - Pimlico